

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

FLORA DELGADO-CRUZ

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v.

WAL-MART STORES TEXAS, LLC

CIVIL ACTION NO. 5:22-cv-485

JURY REQUESTED

**DEFENDANT WAL-MART STORES TEXAS, LLC'S
NOTICE OF REMOVAL**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

NOW COMES, WAL-MART STORES TEXAS, LLC, Defendant, and pursuant to 28 U.S.C. §1446 and §1441(b), files the Notice of Removal of the present cause from the 285th Judicial District Court of Bexar County, Texas, in which it is now pending, to the United States District Court for the Western District of Texas, San Antonio Division, and in support thereof would respectfully show the following:

1. Defendant, WAL-MART STORES TEXAS, LLC, is the sole Defendant, and FLORA DELGADO-CRUZ ("Plaintiff") is the sole Plaintiff in a lawsuit commenced in the 285th Judicial District Court of Bexar County, Texas, Cause Number 2022CI06046.

2. Plaintiff's Original Petition was filed on March 31, 2022, in the 285th Judicial District Court of Bexar County, Texas, bearing the style *Flora Delgado-Cruz v. Wal-Mart Stores Texas, LLC*, and the Cause Number 2022CI06046. A true and correct copy of the service of process on Defendant; Plaintiff's Original Petition; and the docket from the state court cause of action are attached and incorporated herein as Exhibits A – C, respectively.

3. Plaintiff served her Original Petition upon Defendant, WAL-MART STORES TEXAS, LLC, via process server on April 21, 2022, through registered agent, C.T. Corporation System. A copy of the Citation is attached hereto as Exhibit A.

4. In accordance with Local Rule 81, the following constitutes all of the executed process, pleadings, and orders served upon Plaintiff and Defendant in the Action:

- A. Service of Process – Wal-Mart Stores Texas, LLC;
- B. Plaintiff's Original Petition;
- C. Civil Docket Sheet;
- D. Defendant Wal-Mart Stores Texas, LLC's Notice of Removal to the United States District Court. The Notice only has been attached hereto. However, duplicate exhibits were also filed in the state court but are not re-attached herein, for clarity.

5. Defendant, WAL-MART STORES TEXAS, LLC, is a Delaware limited liability company organized and existing under the laws of the State of Delaware. Its principal place of business is 702 SW 8th Street, Bentonville, Arkansas, 72716-6209.

6. According to the lawsuit, Plaintiff is an individual residing in Bexar County, Texas, and is a citizen of the state of Texas.

7. No change in the State of formation, organization, incorporation, or the principal place of business of Defendant, WAL-MART STORES TEXAS, LLC, or its respective member, has occurred since the commencement of the lawsuit, and Defendant, WAL-MART STORES TEXAS, LLC, knows of no such change in the citizenship of the Plaintiff.

8. The lawsuit is a civil action arising from a dispute pertaining to an alleged hit from behind with a shopping cart at a Wal-Mart store located in San Antonio, Bexar County, Texas. The claims made include theories of premises liability and vicarious liability.

9. By this lawsuit, Plaintiff seeks “Actual damages over one million dollars (\$1,000,000.00).” See Plaintiff’s Original Petition, a true and correct copy thereof was filed contemporaneously with this removal, Exhibit B at page 6. Thus, the amount in controversy exceeds \$75,000.00.

10. The lawsuit is within the Federal Court’s original jurisdiction pursuant to 28 U.S.C. §1332, by reason of the diversity of citizenship of the parties and the amount of controversy.

11. This lawsuit is properly removed to the United States District Court, for the Western District of Texas, San Antonio Division, pursuant to 28 U. S. C. §1441 and 28 U.S.C. §1446

12. The Original Notice of Removal is timely filed in accordance with 28 U.S.C. §1332(a) and §1441(b). Removal proceedings are in the nature of process to bring the parties before a federal court and mere procedural defects are not jurisdictional. *Covington v. Indemnity Ins. Co.*, 251 F.2d 930 (5th Cir.), cert. denied, 357 U.S. 921, 78 S.Ct. 1362, 2 L.Ed.2d 1365 (1958). Consequently, any defect in the removal process that does not go to the jurisdiction of the federal court to which the action is removed is waivable. 14 WRIGHT, MILLER AND COOPER, FEDERAL PRACTICE AND PROCEDURE §3721, p. 543 (1976). Conduct that constitutes a waiver of the right to remand has been described as, “affirmative conduct or unequivocal assent of a sort which would render it offensive to fundamental principles of fairness to remand.” *Maybruck v. Haim*, 290 F.Supp. 721 (S.D.N.Y.1968); see also, *Intercoastal Ref. Co. v. Jalil*, 487 F. Supp.

606, 607–08 (S.D. Tex. 1980). *Miles v. Starks*, 440 F.Supp. 947 (N.D.Tex.1977); *Transport Indemnity Co. v. Financial Trust Co.*, 339 F.Supp. 405 (C.D.Cal.1972).

13. Copy of the Notice of Removal filed in the state court is attached as Exhibit D. However, duplicate exhibits were also filed in the state court but are not re-attached herein, for clarity.

14. Copies of all pleadings, process, orders and other filings in the state court are attached to this notice as required by 28 U.S.C. §1441 because the state court where the suit has been pending is located in this district.

15. Defendant will promptly file a copy of this Notice of Removal with the clerk of the state court where the suit has been pending.

16. Defendant requests a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Defendant, WAL-MART STORES TEXAS, LLC, prays that this action be removed from the 285th Judicial District Court of Bexar County, Texas, Cause No. 2022CI06046, to the United States District Court, Western District of Texas, San Antonio Division; that this Court assume jurisdiction of this action; and henceforth, that this action be placed on the docket of this Court for further proceedings, the same as though this action had originally been instituted in this Court.

Respectfully Submitted,

**THORNTON, BIECHLIN,
REYNOLDS & GUERRA, L.C.**

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/s/ Laura Flores Macom _____

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**ATTORNEYS FOR DEFENDANT,
WAL-MART STORES TEXAS, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on this the 17th day of May, 2022 a true and correct copy of the above and foregoing document has been properly delivered pursuant to the Federal Rules of Civil Procedure to the following counsel of record:

Via E-Filing:

Jerry V. Hernandez, of Counsel

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